

No. 2871

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WOO HOO on Behalf of WOO DAN,
Appellant,

vs.

EDWARD WHITE, as Commissioner of
Immigration at the Port of San Fran-
cisco.

Appellee.

Brief of Plaintiff and Appellant

ALBERT C. AIKEN,

Attorney for Plaintiff and Appellant.

Filed this.....day of.....A. D. 1917.

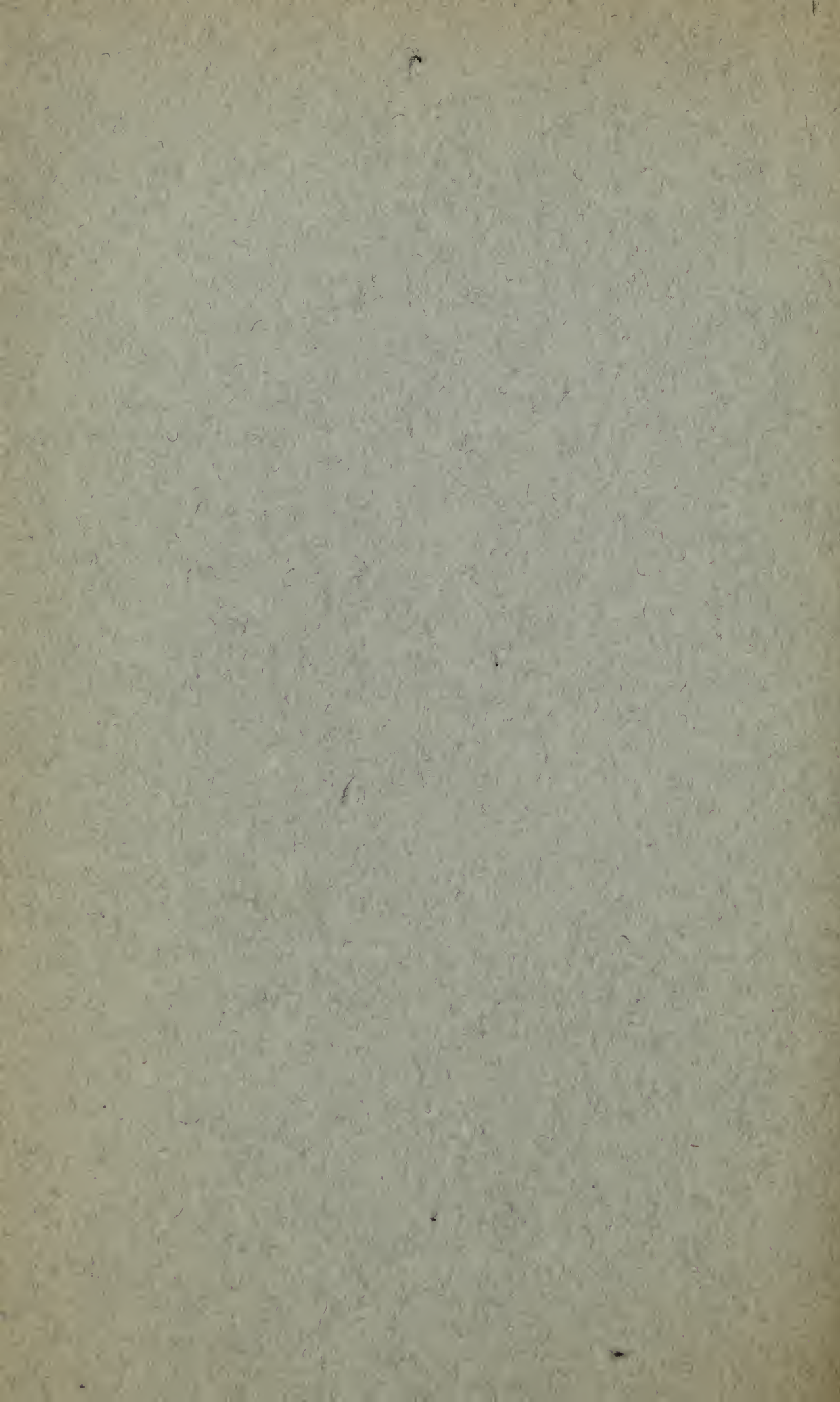
FRANK D. MONCKTON, Clerk.

By

Deputy Clerk.

FEB 23 1917

F. D. Monckton



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IN THE

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In the Matter of WOO DAN
On Habeas Corpus.

BRIEF OF PETITIONER AND APPELLANT.

STATEMENT OF THE CASE.

This is an appeal from an order of the District Court sustaining a demurrer to the Petition praying for the issuance of a writ of habeas corpus, and denying the prayer of the said Petition. (Record p. 10).

Woo Dan the minor son of Woo Hoo applied for admission to land in the United States as the minor son of a regularly domiciled merchant. This application was denied by the Commissioner on the ground that applicant had failed to show that he was such minor. Appeal was taken to the Secretary of Labor, where the excluding decision was affirmed. Then the Petition for said writ was filed, and on denial thereof, this appeal was duly taken.

APPELLANT'S CASE.

Appellant urges the following propositions in sup-

port of this appeal:

1st. That the Petition filed (Trans. 2) states facts sufficient to justify the issuance of the writ of habeas corpus and the framing of issues tendered by the Petition.

2nd. a. There was absolutely no evidence to support the decision of the Commissioner that Woo Dan is not the minor son of Woo Hoo, and there is overwhelming evidence that he is such son.

b. That Inspectors Scully and Lorenzen, in the conduct of the examinations, displayed such an implacable animus toward the applicant, that he was deprived of the benefit of a fair and unprejudiced consideration of his case.

That the said Scully deliberately sought, on at least two occasions, to secretly falsify and distort the record to the prejudice of applicant.

That the said Lorenzen reported to the Commission that the identifying witness Woo Wai Gim was discredited in that, among other things, he had testified that he had never before appeared as a witness, whereas in matter of fact he testified (*p. 8 of testimony*) that he had testified, though not very often.

c. That the Inspectors burdened applicant with repeated, and unnecessary examinations, during which he was assailed by first one then another with a multitude of questions wholly immaterial and beyond the possibility of either corroboration or con-

tradiction, and intended only to confuse and exhaust him. In all he was subjected to six distinct examinations, some of them at great length.

d. Inspector Lorenzen reported to the Commissioner that the discrediting of Woo Wee Gim left applicant without competent evidence to establish his relationship to Woo Hoo. (*Rec. p. 62-3*), whereas the testimony of Woo Mun the last witness, furnished perfect identification, but was given no weight whatever, even after the record was corrected, as hereafter appears.

ARGUMENT.

As to the first point that the Petition states facts sufficient to justify the issuance of the writ:

The hearing in the District Court was on demurrer to the Petition. Such a general demurrer of course admits the truth of the allegations of the material facts. The facts averred show: That applicant was a minor son of a regularly domiciled merchant in the United States; that on his application to be landed as such he was detained and restrained of his liberty by appellee: That applicant was denied a fair hearing on his application to land, and that his hearing was not in good faith and that he was denied the right to land. That at the hearing before the Immigration Bureau, the evidence introduced showed him to be the minor son of Woo Hoo, a domiciled merchant in San Francisco, and that no

testimony was introduced to deny or rebut such evidence in support of said application. That on such hearing the said Commissioner admitted that said Woo Hoo was such domiciled merchant: that said Woo Dan was denied landing, and that such decision was without support in the evidence. Then follows the usual allegations showing appeal to Washington, the affirmance of the order of exclusion; that applicant has exhausted all his remedies, and will be deported unless the Court shall grant the writ asked for; that all the papers and record in the hearing are without the knowledge or control of Petitioner, and in the possession of the Secretary of Labor, and he asks permission to amend his Petition and introduce them in due season. (*Trans. p. 2-7*).

We submit that these allegations establish a prima facie case, as against the general demurrer and entitled the Petitioner to have the case go to issue.

The admitted averment of importance is that Woo Dan was the minor son of Woo Hoo, a regularly domiciled merchant in the United States, and this, under the Immigration Rule in force, entitled the applicant to land. (*Chinese Immigration Rules 9a, In re Gue Lim 176 U. S. 459*).

If however the averments were not sufficient in any detail Petitioner was entitled to an opportunity to amend in such respect. He was however peremptorily dismissed from the Court. (*Trans. p. 10*).

2. However at the hearing in the District Court, the Court permitted the admission and consideration

of the evidence and record taken before the Commissioner, and we respectfully submit that it fully substantiates the averments of the Petition.

A. The Commissioner based his excluding decision on the recommendations of Inspectors Scully and Lorenzen. These recommendation under special order (*Record p. 69*) were not available for examination by counsel until this time, and as these constitute the findings of fact, it was not until the Court was reached that it was known how unjust some of these findings were. The Commissioner reached the conclusion that Woo Dan was not the son of Woo Hoo, thus following the report of Inspector Scully who reported that Woo Dan was the son of the witness Woo Wee Gim, (*Record p. 44*), and he carefully selects the following discrepancies, in the evidence, which to his mind are sufficient to prove his findings (*Rec. p. 59*).

a. The father testified there was but one ancestral hall in their home village, (*p. 13*).

The son testified that there were two ancestral halls, (*p. 30*).

In explanation of this it will be noted that the father testified later on page 87 that he had since been informed that a second ancestral hall had been built since he had left the village, 20 years since. But to this testimony, the Inspector gives no credit.

b. Woo Wai Gim testified that he visited applicant's home in the second row, 4th house, (*p. 9*).

Applicant testified that he lived in the 3rd row 4th house. (p. 27).

c. Father testified that he owned no other property than two houses, in one of which they lived, (p. 12).

The son testified that all the property they had were two houses, and a small vegetable garden. (p. 28).

However in explanation of this the father later testified that he had once "mortgaged" a small piece in addition to the two houses, and that they may still be holding it. (P. 86)

These constitute the discrepancies picked out by the Inspectors from amid the great mass of testimony, upon which they base their conclusion that all three of the witnesses are testifying falsely. To our mind they are readily reconciled by one seeking for the exact truth, in the fact that each witness is testifying of conditions that prevailed at widely different times. The father was last in his village twenty years ago. The visit of Woo Wai Gim was in 1909 or about six years ago, while Woo Dan testifies to things he knew as of *to-day*. Not only might conditions have changed throughout these years, but through the stride of years the human mind is not infallible, and the honest seeker after the truth will often very wisely touch lightly upon immaterial details, as to which two minds may have been very differently impressed, or one may not have been im-

pressed at all, while to another the impression may have been deep and lasting. It is indeed a matter of great wonderment to us that from the great mass of testimony, and the thousands of questions asked, the industry of Inspector Scully should have been rewarded with finding so few discrepancies in the testimony. And we believe that he does the applicant a grave injustice when he makes no mention of the wonderful coincidence of the facts testified to by them. Even discrepancies often prove the truthfulness and honesty of a witness, just as an exception may indicate a rule. It is only by an investigation of the entire body of the testimony, giving to each item its bearing upon the whole, that we can arrive at the real and essential truth. So in this case, it appears as inconceivable that the evidence of Woo Dan should in a hundred details corroborate the evidence of the others, whom he had never seen; and especially that he should be corroborated by the evidence of Woo Mun, whom he thought in China, and whose unexpected return, made him available as a witness. The theory of Inspector Scully that Woo Dan was in fact Woo Sick Ngim, the son of Woo Wai Gim, refused landing in 1910, can be justified only upon the assumption that every witness was so successfully coached that he could survive the grilling examinations without it becoming apparent. In view of the fact, finally determined, that Woo Mun had had no opportunity of meeting with Woo Dan, and that his testimony corroborated that given before

his arrival here from China, it appears idle for the Inspectors to have remained firm in their decision based on the universal perjury of every witness in the case. There is not one scintilla of evidence in the record to support the conclusion that Woo Dan is the son of Woo Wai Gim. The conclusion is based wholly on suspicion and conjecture, and we venture the belief that Inspector Scully would fail to advance the belief on cross examination under oath.

B. Applicant's testimony is attacked as untrue because it is stated by Inspector Scully that although Applicant testified that he had no brother, yet a letter was found "*in his trunk*" addressed to "*Woo Dock Wo, My Brother*" (p. 115-16).

The Inspector thereupon concluded of record that applicant falsified, that he had a brother and that in fact he was *Woo Sick Ngim*, son of Woo Wee Gim, by reason of his likeness to a photograph of the latter.

Relative to the finding of this so-called letter "*in the trunk*" of applicant, we wish to call attention to the correspondence and facts surrounding the building up of the record relating to it. (*See p. 46 of Record*). It is noted that Inspector Scully stated to applicant that the letter had been found *in his trunk*, and asked for an explanation of it, how it came there, and about his knowledge of the various persons named in it, all the time giving emphasis to the fact that its presence *inside* the trunk made the

“find” significant. (p. 46). By mere accident it came to the knowledge of counsel for applicant that the letter had been found by the Inspector *outside* and not *inside* the trunk, as the Inspector would have the record show; and that the Inspector had, as matter of fact, found *inside* the trunk some books and chops, (wooden stamps) carrying the name of *Woo Dan* in chinese characters, and that these stamps bore the appearance of having had considerable usage. These books and stamps had been suppressed from the record by the Inspector, and the false statement that the letter had been found *inside* the trunk was placed in the record.

Upon ascertaining this fact counsel addressed the Commissioner the letter found in the record of exhibits (page 74), asking that the record be corrected to show the actual facts, and protesting the unfairness of the proceeding. The only action brought forth by this letter was a demand from the Commissioner, that the attorneys should disclose the source of their information, giving no assurances whatever that justice would be done the applicant by the making of the proper correction. Counsel thereupon addressed the Commissioner a second communication, (p. 96) again protesting the unfairness of such falsification of the record by Inspector Scully, and again demanded that action to have it corrected be taken. No direct reply was made to this letter, but Inspector Scully placed a communication in the record (p. 53) in which he admits that he found the

letter *outside* the trunk, and that the stamps and book found *inside* the trunk were not mentioned by him as he thought they had no bearing on the case.

This correspondence took place prior to *February* 17, yet in the letter of the Commissioner transmitting the record on appeal to Washington, dated *March* 3, the following is the report made therein by him on this subject, (*p.* 101-2-3):

“Attention is invited to the fact that the attorneys of record failed to disclose the source of their information with regard to the conditions under which a certain bill or order was found *in the applicant's trunk*, despite direct inquiry from this office, so that the only inference is that secret communication was had with the applicant.”

Note the ill grace with which the Commissioner fails to recognize the error. We submit that the facts of this disclosure relating to this letter and these wooden stamps, evidence in the mind of the officers, Inspectors and Commissioner alike, such a hostile attitude to the applicant that he was deprived of a fair hearing: that the attempt by Inspector Scully to falsify the record is clearly admitted, and that the point which appeared most deeply to distress the officers was the leak in the service, rather than that the rights, freedom and liberty of a human being had been jeopardized and that personal rights had been criminally infringed upon by unscrupulous

and altogether dishonorable means. From their point of view, perhaps the integrity of their "system" is of vastly more importance than is the life and liberty of this poor friendless boy; but this view can prevail only temporarily at most: in the long run, a great, proud and arrogant "system" cannot afford to be unjust to the poorest and the meanest. Retribution will come, if not to the individuals of the "system," it will to the nation. The greater and stronger we are, the less we can afford to wrong unjustly a weak individual.

C. *The executive hearings fail to give any weight or consideration to the evidence and affidavit of Woo Mun, (p. 86).* We respectfully submit that this testimony, by reason of the peculiar conditions under which it was secured and taken, is the most important in the case: Yet it was given no weight whatever, and was reported on by Inspector Scully (p. 94) as adding nothing to the case. After submission the case was re-opened to hear the testimony of Woo Mun who had returned from China, since the arrival of Woo Dan.

There could be no possible chance of any coaching, as Woo Mun was still in China when Woo Dan left, and did not arrive here until nearly a month after the arrival of Woo Dan. Unless it could be shown that he had had an opportunity of consulting with Woo Dan, it must be apparent that his testimony to the relationship and home of Woo Dan if

corroborated by Woo Dan would be final and convincing. Woo Dan arrived on December 6, 1915, and Woo Mun on December 27, 1915. (*p.* 86). The examination of Woo Dan taken prior thereto shows that he knew of no other possible witnesses he could call, as he knew of none here that knew of his home village or himself other than Woo Wai Gim. The Inspectors knowing of the arrival of Woo Mun, carefully laid the groundwork to catch the applicant in a contradiction before he knew of the arrival of Woo Mun by taking his testimony on January 20, (*p.* 61), in which he is asked whether he knew any one else now in the United States, and whether any one else beside Woo Wai Gim had visited him in China who were now in the United States, to which he answered "no." He was thereupon warned "I want you to be very careful about these statements so that you will not at any time in the future claim that you forgot about these matters," and he was then asked "If any others should be presented as having called at your house at any time in China, you would not remember of such incident, would you?"

Then in a subsequent examination they sprung the fact that Woo Mun was in the United States, and Inspector Scully has it appear in the record that Woo Mun arrived in this Country and was confined in the detention sheds along with Woo Dan for a period of 22 days, bringing in the possibility and probability that they had been in repeated consultations with each other. Woo Mun was then produced

for taking of his testimony on behalf of the applicant. He of course testified that he had not talked with Woo Dan; and thereupon gave evidence of his recent visit to the home of Woo Dan, and of having seen the mother and grandmother and of his knowledge of the relationship between Woo Dan and Woo Hoo. (*See testimony Woo Mun p. 66*). The detail of his testimony coincides closely with the testimony of Woo Dan. He described the family of Woo Hoo, and the mother and the wife, and of the village characteristics. The fact that his evidence should correspond with the evidence of Woo Hoo might not be so convincing of its entire truth, as the two had been together since arrival, but the fact of his visit being testified to by Woo Dan, and that it was timed the same by both; that the same circumstances are detailed the same by both, that the various facts testified to by one are corroborated closely by the other, leaves but one possible construction to be placed upon the testimony, and that is that it is absolutely truthful and accurate.

But is this evidence, (convincing as it is) given its proper or any weight by the Inspector in his report? Not so. What does he do, but again, and for the second time in this case, he seeks to so falsify the record as to show or make it appear that Woo Dan for a period of 22 days had access to the said witness, and thereby to cast a suspicion over its authenticity. (*pp. 79-82*). However by fortunate chance, applicant's counsel discovered the drift of

Inspector Scully's course, and addressed a letter to the Commissioner demanding that the record be corrected so as to correspond to the facts, viz, that Woo Mun had arrived at the detention sheds on the afternoon of Dec. 27 and was released the next morning, remaining only overnight therein. (p. 106).

The correction was made by the Commissioner in a letter to the Com. General (pgs. 106-106b) in which the matter is referred to as an "error" of the Inspector, and adding that "*it is unfortunate that this error occurred in this particular instance, in view of the fact that this case was one specially mentioned by the Chinese Consul General in his complaint to the Chamber of Commerce.*" Thus it will be seen that no word was added of the additional weight that the elimination of such an error gave to the testimony of Woo Mun; it was not considered that his evidence conclusively proved the entire case for Woo Dan. The honorable Commissioner was not concerned so much with doing justice to the applicant, or in ascertaining the exact truth, as he was concerned in sustaining the "system" of which he was the distinguished representative on this Coast. It was he says, unfortunate that this "error" occurred in this "*particular*" case, which was then under investigation by a committee from the Chamber of Commerce. Inspector Scully was excused for committing a mere error. Yet such error was the second serious one, of which he had been found guilty in this "*particular*" case. In both instances, odd as it

may appear, the error, if not discovered, would have nullified the two most important pieces of testimony that proved the right of Woo Dan to land. The first would have indicated strongly that he had a brother, by reason of a letter found within his trunk so addressed, and the second would have thrown a serious cloud upon the testimony of Woo Mun, which absolutely corroborated Woo Dan as to his relationship to Petitioner.

Numerous references are found in the record of friction existing between the Chinese Consul and the San Francisco Chamber of Commerce on one side, and the Immigration Bureau on the other. The record contains letters of protest from the Consul (*p.* 90) against the methods used in this Woo Dan case, and the filing of his protest with the Chamber of Commerce. Upon these a committee from the Chamber made a report sustaining the protest of the Consul and the matter was carried to Washington.

These circumstances placed poor Woo Dan in the storm center of the contention, and made him the innocent victim of whatever rancor might have been engendered by the unfortunate discussion. In the midst of such a discussion his right to land was passed upon, and it is hardly possible that his case could, under such circumstances, have received the dispassionate consideration to which it was entitled. It is difficult at this day to appreciate the bitterness that was engendered, but it is sufficient indication when it is known that as a result, the immigration

Bureau by representations through the Chinese Ambassador, secured the removal of the Consul General. It is only now, that the matter can be viewed dispassionately, in the light of all the testimony, and a decision reached that will be in accord with justice and the law. At the time the record was changed so as to eliminate the alleged "errors" made by Inspector Scully, the additional weight to which the evidence was thereafter entitled, was not given to it, and for that reason applicant was deprived of the fair and impartial consideration of his application to which it was entitled.

D. Another aspect of the taking of the evidence that was very unfair to the applicant rests in the numerous and unnecessarily exhausting examinations to which the applicant was subjected.

The objection rests in the character of the questions asked, and not alone in the length of the examinations. It appeared to be the desire of Inspectors Lorenzen and Scully to so tire and exhaust the applicant that he would find himself in a hopeless maze of contradictions. We refer particularly to the examination of December 20, 1915, in which a mass of testimony was demanded that was impossible of either contradiction or corroboration, involving information on the character, feet, age and family of each member of the village in which he lived. The Commissioner appears to admit in his letter to the Commissioner General transmitting the record on appeal, (p.101-3),

that this criticism is well taken, when he says: "Considerable attention has been drawn to this case by attacks on the investigating officers by the attorneys of record and the Chinese Consul General, as will be noted from the letters appended to the record; but no extended comment is necessary as the record speaks for itself. This office however desires to express the opinion that the attacks are unwarranted, and that with the *possible exception of a few questions propounded by Inspector Scully, the materiality of which might not be apparent*, there is absolutely no ground which would furnish a basis for the charge that those officers were unfair or prejudiced in the conduct of this case."

In order to arrive at the true indication of this action by the Inspectors, it must be taken not alone, but in conjunction with the balance of the conduct of the case by these two inspectors. If an examination were being conducted by a prosecuting attorney before a court of law, in which the defendant was represented and protected, the trend of the examination could not be so objectionable; but in a case in which the inquisitors are also acting as jury, in which the applicant is not represented, and the examination held in secret, the burden rests heavily on the officials to show the fairness of the proceeding. They must be controlled by the theory that the inspectors are engaged in a fair search for the truth, not in an endeavor to *prevent* the landing of the applicant, but solely to determine whether he is en-

titled under the law to land.

“The refusal to permit an alien representation by counsel, places upon the Immigration Officers the burden of showing the fairness of the proceeding. There must be an honest effort to establish the truth.”

“The essential thing is that there shall have been an honest effort to arrive at the truth by methods sufficiently fair and reasonable to amount to due process of law.”

Chin Loy You (D. C.) 223 Fed. Rep. 833.

and Judge Dooling has recently ruled that where the examination of the applicant is held in a spirit that is hostile either to the law or to the applicant, that the hearing is unfair and without due process of law.

Ex parte Lee Dung Moo, 230 Fed. 746.

Ex parte Tom Toy Tin, 230 Fed. 747.

When the Inspectors betray a wanton desire to prevent the landing of applicant, by the introduction of methods calculated to cloud the issue or to defeat the ascertaining of the exact facts, they are conclusively failing to give the applicant that fair hearing to which he is under the law entitled. It is immaterial whether the method is the result of “error” or criminal design. The effect is the same:—the applicant has been deprived of a fair hearing, and the Court is his proper refuge.

F. The record contains a statement by the Bureau's Surgeon to the effect that in his opinion the applicant's age is within one year either way of 23, thus taking him beyond the age of minority.

In view of the foregoing discussion of the weight of the evidence of Woo Mun, from which it must appear that Woo Dan is unquestionably the son of Woo Hoo, the surgeon's opinion as to age is of little weight, inasmuch as the return of Woo Hoo to this country is conceded to have been in November, 1895. As Woo Dan was born after his departure from China, (p. 45) he must perforce, if he be the son of Woo Hoo, be still under the age of majority, whatever might be any one's opinion thereon.

The Commissioner makes the point that applicant's minority is merely a "technical" minority inasmuch as he is married and as such ought not to be considered in his favor. However being married does not carry a boy out of the years of minority so as to evade the statutory definition of what constitutes minority. It is immaterial that a privilege be founded upon a right that is purely "technical," it is none the less a definite right. (*Ex parte Lee Dung Moo* 230 Fed. 746). Furthermore it appears positively that applicant has at all times been a member of his father's household and partly dependent therein, and that he intends to so continue here on landing. By custom in China, children marry as young as 15 years, and continue dependent members of the fathers household.

A final point suggested by Inspector Lorentzen, is that the photographs of applicant show a likeness, not to his alleged father Woo Hoo, but to the witness Woo Wai Gim, and that applicant in fact is one of the two sons of Woo Wai Gim, who was refused landing in 1910. As the photographs of these persons are before the Court a personal inspection is better than argument in this matter. The boy, Woo Sick Ngow, No. 5951, whose photograph was taken about April 1909 is the boy claimed by the Inspector to be the present applicant. We submit that there is a strong likeness between Petitioner Woo Hoo and his father Woo Dan, and that there is but a remote likeness to No. 5951 claimed by the Inspector. We note one very distinguishing feature between the family of Woo Hoo and the family of Woo Wai Gim, and that is the shape of the lobe of the ears. These seldom change, in course of years, and certainly in the course of five years they are not likely to change. We refer to the square cut of the lower portion of the lobe of the ear of both Woo Hoo and Woo Dan, and the large size of the lobe. The ears of Woo Wai Gim and his sons have very little lobe, and what is there, has an angular sharp slant. There are other points that will be apparent to the Court, such as the shape and slant of the eye, and the set of the lips and shape of the mouth which we need not now refer to further.

In conclusion we therefore submit that the hearing allowed to Woo Dan was unfair inasmuch as

from the above facts referred to, there was unquestionably in the minds of Inspectors and Commissioner alike a hostile attitude, that was evidenced by the efforts to falsify the record, by the methods resorted to to deceive the applicant into assuming a false position and into giving false testimony; and that this attitude of hostility was fostered, if indeed it did not have its start, in the bitterness engendered through the criticisms aimed at the Immigration Bureau by both the Chinese Consul and the San Francisco Chamber of Commerce; criticisms that were rendered the more bitter in that they were well taken, in some instances at least. This condition put the Department "on edge" to sustain its position and actions, and we contend that in the maelstrom of unhappy contention, Woo Dan became the unfortunate victim of circumstances. As a result, he has suffered an actual imprisonment in the detention sheds for more than a year. This is second only to a term in states prison for a dire offence; and yet he is guilty of nothing more serious than to have lawfully sought to join his old father in this happy land of ours. We very respectfully ask that the order of the lower Court be reversed, and that the applicant be landed upon the record now before this Court.

Respectfully submitted,

Albert C. Clark
Attorney for Appellant.

